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SUPREME COURT OF THE UNITED STATES.

No. 154.

HIRAM PEARSONS, APPELLANT,

vs.

JOHN BIRD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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MISSOURI DISTRICTS, *sct.*

Pleas before the Hon. Rob't W. Wells, district judge of the United States for the western district of Missouri, and the Hon. Samuel Treat, district judge of the United States for the eastern district of Missouri, judges of the circuit court of the United States for the eighth circuit and districts of Missouri, at St. Louis, Missouri, on the 23d day of October, 1858.

HIRAM PEARSONS, Complainant,
agst.
JOHN BIRD, Defendant. } In Chancery.

Be it remembered, that heretofore, to wit, on the 5th day of November, 1857, came the complainant, by his solicitor, and filed in the clerk's office of the circuit court of the United States for the districts of Missouri, his bill in chancery against the defendant, as follows, viz:

Bill in Chancery.

UNITED STATES OF AMERICA,
District of Missouri, ss.

To the Judges of the Circuit Court of the United States for the district of Missouri:

Hiram Pearsons, of the city of San Francisco, California, and a citizen of the State of California, brings this his bill against John Bird, of Mississippi county, Missouri, and a citizen of the State of Missouri.

And thereupon your orator complains and says, that to the April term of the circuit court in and for the said county of Mississippi, the said Bird filed a petition against him, the said Pearson, to foreclose a certain mortgage which had been executed by the said Pearsons, and delivered to the said Bird on the 16th day of March, 1846, or thereabout, which mortgage was upon the following described property, situate in the said county, viz., a certain tract of land, bounded as follows: commencing at the southeast corner of survey No. 2,232, from the Spanish government to Jonathan Stoker; thence running in a northerly direction through survey No. 2,231, and following the lane that runs east of the said Bird's mill and house, to a stake stuck in the said lane, near the Mississippi river; thence north to the Mississippi river; thence in a westerly direction, following the Mississippi river to the northeast corner of survey No. 2,232, before mentioned, as surveyed to Jonathan Stoker; thence in a southeasterly direction, following the line of the said

Stoker's survey to the place of beginning, containing $91\frac{4}{100}$ acres, as by said mortgage, recorded in said county, will fully appear.

Also a certain other tract of land, situate in the said county, and described as survey No. 2,232, surveyed for one Abraham Bird, claiming under the said Jonathan Stoker, and containing $212\frac{67}{100}$ acres.

Also a certain other tract of land, known as survey No. 2,230, situate in said county, in township 27 north, of range 17 and 18 east, and containing $191\frac{40}{100}$ acres.

Also the northwest quarter of section 30, township 27 north, of range 18 east, containing $160\frac{52}{100}$ acres.

Also the northeast quarter of section 25, of township 27 north, of range 17 east, containing $163\frac{98}{100}$ acres.

Also the east part of section 24, township 27 north, of range 17 east, containing $100\frac{35}{100}$ acres.

Also the southwest quarter of section 24, township 27 north, of range 17 east, containing $164\frac{34}{100}$ acres.

Also the northwest fractional quarter of section 24, township 27 north, of range 17 east, containing $141\frac{28}{100}$ acres.

Also the northwest quarter of section 25, township 27 north, of range 47 east.

And the said Pearsons further states, that he was, at the time of the execution and delivery of the said mortgage, and still is, except as hereinafter stated, the owner in fee of the said described tracts and parcels of land, and mortgaged the same to the said Bird, as aforesaid, to secure the payment of three several notes of even date with the said mortgage, each for the sum of four thousand one hundred and twenty-five dollars, made by the said Pearsons in favor of the said Bird; one payable on the first day of March, 1847, and stipulating to bear interest at the rate of ten per cent. per annum from the time the said note became due until paid; one payable on the first day of March, 1848, and bearing interest at the rate of ten per cent. per annum from March 1, 1847, until paid; and the remaining note, payable the 1st day of March, 1849, with interest at the rate of ten per cent. per annum from said March 1, 1847, until paid.

And the said Pearsons further states, that the said petition of the said Bird sought to foreclose a certain other mortgage, theretofore given by this complainant to the said Bird upon the identical lands in the said first mortgage described, with the exception of that part of survey No. 2,232, and of said survey No. 2,230, which lies west of the range line intersecting said surveys Nos. 2,232 and 2,230; which last mortgage bore date May 27, 1848, and was executed by this complainant to secure the payment of a certain other promissory note, for the sum of five hundred dollars, made by this complainant jointly with one William Kennedy and one E. H. Fletcher, and payable six months after date thereof to

the said John Bird, which said note was dated Jan'y 11, 1847. All of which by the record in said court remaining, an exemplification of which is filed herewith, will fully and at large appear.

And this complainant further states, that on or about October 1, 1849, process in said case was duly served upon him, and that at the April term of said circuit court of Mississippi county a decree was entered foreclosing the said mortgages and subjecting all of the said several tracts of land in the said first mortgage described, to sale for the payment of the entire amount of said four notes, principal and interest, according to their face respectively, and also subjecting the other goods and chattels, lands and tenements of this complainant, to levy and sale for whatever balance, after the sale of the said mortgaged premises, might remain unpaid of said sum for which judgment was rendered as aforesaid, viz: the sum of fifteen thousand six hundred and ninety-six dollars and costs of suit. All which by the record of said proceedings, as from the exemplified copy filed herewith, will fully appear.

And this complainant further states, that on July 1, 1850, a special scieri facias was issued upon said judgment, directed to the sheriff of said county of Mississippi, in accordance with the terms of said decree, by virtue of which execution the said sheriff sold the said tracts and parcels of land in the said decree and mortgage described, on the 29th day of October, 1850, in one entire body, and without exposing to sale the said separate tracts and parcels, or other lots as hereinafter described, in their separate parcels, to the said John Bird, for the gross sum of seven thousand dollars, and on the same day made his deed accordingly, as this complainant supposes, but the only return upon the said execution by the said sheriff, or memorandum of any proceeding by him, is in the words and figures following:

"Received of John Bird seven thousand dollars, the amount of the purchase-money on the within described land, sold on this execution at public auction to the highest bidder this Oct. 29, 1850.

"JOHN BARKER,

"*Sheriff of said County.*"

All of which more fully appears in the records of said court, and the exemplification as aforesaid filed herewith.

And this complainant further states, that before the rendition of the said judgment, viz: on the 31st day of March, 1846, he paid to the said John Bird the sum of fifteen hundred dollars, which the said Bird received in part payment and satisfaction of said mortgage first named, which said payment was then and thus endorsed upon the back of the first note in the said first mortgage described, as the same was present in court at the time of the rendition of the said judgment; and that in consideration of the said payment, the

said Bird by his deed of that date released to this complainant all those parts of said surveys Nos. 2,230 and 2,232 which lie west of the range line intersecting the said surveys, which deed of release was duly acknowledged and recorded in the proper office of the said Mississippi county, and was so recorded on the said March 31st, 1846, a copy of which release (marked B) this complainant files herewith.

And this complainant further states, that soon after the date of said release, and long before the proceeding aforesaid to foreclose the said mortgage, he had caused to be surveyed and draughted, upon the portion of the land so released as aforesaid, in due form of law, a plat of a town, divided, as is usual, into lots, blocks, and public streets, and called Ohio City, which plat is, and at the date of the said proceedings to foreclose the said mortgage and sale, as aforesaid, was duly recorded in the proper office in said county; that moreover he had made sale of a large number of said lots, so platted, upon which the purchasers had severally erected stores, dwelling-houses, and other buildings, which were then in possession of the said purchasers, in addition to which this complainant was the owner of a large number of said lots remaining unsold.

And this complainant further states, that the said Bird, since the date of the said deed from the said sheriff, has not made sale of any of the property embraced in the said deed, as this complainant is informed and verily believes, but whatever title the said Bird acquired under the said deed is still vested in him.

And this complainant further charges, that the said judgment of foreclosure and sale thereunder were injurious, illegal and fraudulent in the respects following, to wit:

I. At the time of the service of process in said case, as hereinbefore stated, this complainant was on the point to leave for California, and actually did leave the port of New Orleans for said destination on or about Dec. 1, 1849, intrusting the defence of said suit to an attorney of said court named T. B. English, who undertook said defence.

II. That said mortgage was foreclosed upon the entire body of land embraced in the said first mortgage, although the said Bird and the said English well knew that the said parts of said surveys numbered 2,232 and 2,230 had been released, and that portions of it so released had been sold.

III. That no credit was given for the said payment of fifteen hundred dollars, and of the interest to be allowed in case the same were paid before due, although said payment was endorsed upon one of the said notes necessarily produced in the said cause, and although the fact of said payment was known to the said Bird and the said English.

IV. By the terms of the agreement between the said Bird and

this complainant, as expressed in the said first mortgage, a copy of which is filed herewith, the said Bird, who had been the owner in possession of said lands, and was still in possession of the same, was to deliver up said possession to this complainant on March 1, 1847, at which time the interest on the notes in said first mentioned mortgage was to commence; notwithstanding which the said Bird had remained, and has remained in possession of said several tracts of land, with the exception of the site of Ohio City released as aforesaid, to the present time, but nevertheless claimed and obtained a decree for the entire interest accrued on said notes according to their original tenor, without in any way accounting for the rents, issues and profits of the said lands, which he had continually engaged against the true meaning of the said agreement, and without opposition from the said English; which rents, issues and profits were of more value than the entire interest accrued on said notes.

V. That the said several tracts of land, consisting of quarter-sections, parts of sections, surveys and parts of surveys, having no natural connection one with another, and of undue quantity, and the said town site duly divided, platted and recorded, and overspread to a considerable extent with buildings and inhabitants, were exposed to sale and sold in one entire body, and not at all in separate paraels, all which was contrary to law and to the manifest injury of this complainant.

And this complainant further states, that aside from the said town lots, with their several improvements, different tracts of the said land were essentially separated and disconnected, one from the other; that in the whole they embraced nearly 1,400 acres; that they were valuable and salable in their different parts, and to sell them in one body for a gross sum, enabled the said Bird to purchase without competition and at his own price, greatly to the injury of this complainant.

And this complainant further states, that the said lands, at the time of the said sale by the said sheriff, were worth the entire amount of the said judgment, so as aforesaid rendered against him; and if the same had been duly and judiciously offered for sale, in proper parcels and divisions, by the said sheriff, irrespective of the site of Ohio City, so released as aforesaid according to law, he verily believes the proceeds of said sale would have covered the entire amount of said judgment.

And this complainant further states, that he remained in California, unadvised of sa d proceedings, until July 13th, 1854, at which time he visited the city of New York, where he remained most of the time sick and busily engaged, until the 5th day of October, 1854, when he returned to California, where he resided without any notice of the above recited proceedings, subsequent to the service of process upon him as aforesaid; that he again re-

turned from and arrived in New York on or about August 13th, 1855, and on or about Nov. 1, 1855, for the first time had notice of the proceedings herein complained of.

And this complainant further states, that to the May term of said circuit court of said Mississippi county, (so soon as he could get possession of the facts, and secure the advice of counsel,) he caused to be filed a petition, praying the said court to declare said proceedings of sale a nullity, and to restore his title to the said lands, as against the sale and for other purposes, as by a copy of the said petition filed herewith, and marked (D,) will fully appear. But this complainant avers, that while he has prosecuted his said suit with all becoming diligence, yet such are the delays incident to the crowded condition of the dockets of said court, with its brief terms, and such is the inconvenience of litigation from term to term, in so remote a county, that he seeks to expedite matters by a discontinuance of the proceedings so commenced by him, and a change of his complaint into this tribunal.

This complainant will not pretend to such inexperience as not to have anticipated that in due course the said mortgages would be foreclosed, and the lands described in them, or so much thereof as should be necessary, sold; but he did expect, and had a right to expect, especially after the employment of counsel, that the decree would be made simply for the amount due; that the decree would not affect lands theretofore formally released, partially sold and occupied as the site of a town, and that the sale of said lands, if made, would be properly made in separate parcels according to law.

This complainant did not doubt (and does not doubt) that if said judgment had been assessed without fraud, and the sale duly conducted according to law, the mortgaged property had liquidated the entire debt.

This complainant files herewith an office copy of the plat of the said several tracts and parcels of land, and of the said Ohio City, and of the said deed of release; to all which, and to the record of all proceedings in the said case of Bird against him, he prays leave to refer.

And this complainant further states, that in November, 1855, in relief of the sureties thereon, he paid or caused to be paid to the said Bird the sum of eight hundred and eighty-five dollars, in full discharge of said note of five hundred dollars principal and interest, and of so much of the claim of the said Bird against him as originated in the said note; and that he is ready and willing at all times to pay to the said Bird the full amount of any just claim of the said Bird in the premises, as the same may be ascertained by this court.

To the end, therefore, that the said John Bird may be made defendant to this bill, and show cause, if any he has, why the relief

prayed should not be granted, this complainant prays the subpœna of this court to be directed to the said John Bird in that behalf, and that he be required to answer upon his corporal oath all the foregoing allegations as fully and particularly as though he were herein specially interrogated thereto.

And this complainant further prays to be relieved against the proceedings herein complained of; that the said payments made by him on account of said mortgage debts be duly credited with the proper interest on said decree; that the said Bird be required to account for the rents, issues and profits of said lands so remaining in his possession, and that the sum duly ascertained by said accounting be credited on the amount due from this complainant according to the true meaning of the agreement between the parties hereto, and as this court shall find to be just; that the said sheriff's sale of the said lands, and the said sheriff's deed and record thereof, be vacated, and annulled and set aside, as having been irregular, illegal and void, and in fraud of the rights of this complainant.

And this complainant have such other and further relief in the premises as may be adapted to the law and equality of the case, and to the rules of this court.

N. D. & G. P. STRONG,
Solicitors for Compl't.

HIRAM PEARSONS.

U. S. OF AMERICA,
District of Rhode Island, ss.

On this thirteenth day of October, A. D. 1857, before me personally appeared Hiram Pearsons, of the city of San Francisco, in the of California, who being by me duly sworn, did depose and say, that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters, that they are true according to his best information and belief, and that the above was subscribed by him.

JOSEPH J. PITMAN,
U. S. Commissioner of the Circuit Court of the U. S. for said district.

RHODE ISLAND DISTRICT, *ss.*

I, Henry Pitman, clerk of the circuit court of the United States for said circuit, do hereby certify that Joseph S. Pitman, whose name is subscribed to the foregoing certificate, is a United States commissioner for said court, and that his signature affixed to the said certificate is his genuine handwriting.

In testimony whereof, I have hereunto set my hand, and the seal of said court, this thirteenth day of October, A. D. 1857.
[SEAL.]

HENRY PITMAN, *Clerk*.

In vacation, on November 5th, 1857, the following proceedings took place in this cause, to wit:

HIRAM PEARSONS, Complainant,
ag'st
JOHN BIRD, Defendant. } In Chancery.

This day comes the complainant, by N. D. Strong, his solicitor, and files his bill in chancery against said defendant, and on motion of said solicitor, a subpœna in chancery is awarded on said bill, returnable to January rules, being first Monday of January, 1858, which said subpœna in chancery is in the words and figures following, to wit:

Subpœna in Chancery.

MISSOURI DISTRICT, *sct.*

The President of the United States to John Bird, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Missouri, on the first Monday of January next, at the city of St. Louis, then and there to answer the bill of complaint of Hiram Pearsons, a citizen of the State of California, filed against you on the fifth day of November, 1857. Hereof fail not.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, the fifth day of November, 1857.
[SEAL.]

Issued at office, in the city of St. Louis, under the seal of said court, the day and year aforesaid.

BEN. F. HICKMAN, *Clerk*.

MEM.—The defendant to enter his appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

BEN. F. HICKMAN, *Clerk*.

Marshal's Return.

Upon which subpœna in chancery the marshal made the following return:

I hereby certify that I served the within writ on John Bird on the twenty-sixth day of November, A. D. 1857, by reading the same to him and within his hearing, at the county of Mississippi,

in the State of Missouri, and by delivering to him a certified copy of the declaration and writ, or summons.

THOMAS S. BRYANT,
United States Marshal,
Eastern District of Missouri.
By RICH'D BARKLEY,
Deputy Marshal.

And afterwards, at rules, began and held at the clerk's office, in the city of Saint Louis, on the first Monday, being the 4th day of January, 1858, the following proceedings took place in this cause:

HIRAM PEARSONS, Complainant, agst. JOHN BIRD, Defendant. } In Chancery.

Appearance of Defendant.

This day comes the defendant, by Messrs. Field and Cook, his solicitors, and enters his appearance to the bill of complainant filed against him, and also filed his answer to said bill of complaint, which notice of appearance and answer was left in the papers in this cause on 16th day of December, 1857, and are in the words and figures following, to wit:

In the Circuit Court of the United States for the district of Missouri.

HIRAM PEARSONS agst. JOHN BIRD.

The defendant by his solicitors enters his appearance and files his answer.

FIELD & COOK,
Solicitors of Defendant.

And afterwards, at rules, began and held at the clerk's office, in the city of St. Louis, on the first Monday, being the 1st day of February, 1858, the following proceedings took place in this cause, to wit:

HIRAM PEARSONS, Complainant, agst. JOHN BIRD, Defendant. } In Chancery.

This day comes the complainant, by Messrs N. D. and G. P. Strong, his solicitors, and files exceptions to the answer of defendant heretofore filed in this cause.

And afterwards, at the April term of said circuit court for the Missouri districts, on the 17th day of April, 1858, the following proceedings took place in this cause, to wit:

HIRAM PEARSONS, Complainant,
agst.
JOHN BIRD, Defendant. } In Chancery.

Order withdrawing Answer and filing Demurrer.

This day come the parties by their solicitors, and by consent leave is given the defendant to withdraw the answer filed herein by him, and thereupon the said defendant, with the leave of the court and consent of complainant's solicitor, files a demurrer to said bill, to which demurrer the complainant files a joinder, and also a waiver, in writing, of the affidavit and certificate as required to said demurrer; and thereupon the matters of law arising upon said demurrer being heard by the court, and the court being advised of and concerning the same, is of opinion that the law is for the defendant on said demurrer, and accordingly orders that said demurrer be and the same is hereby sustained; and thereupon, on motion of said complainant, leave is given him to file an amended bill herein, said amended bill to be filed on or before the next rule day of this court, which said demurrer, &c., are in the words and figures following, to wit:

Demurrer to Bill.

In the Circuit Court of the United States for Missouri districts.

HIRAM PEARSONS, Compl't,
vs.
JOHN BIRD. Defendant. } In Chancery.

The demurrer of the defendant to the bill of complaint of the complainant.

The defendant by leave of court demurs to said bill of complaint, and says that the same is wholly insufficient, and contains no case requiring any answer on the part of this defendant, because it manifestly appears that this court has no jurisdiction of the several matters and things in the said bill contained. Wherefore the defendant prays that the said bill be dismissed with costs to be allowed the defendant.

COOK & FIELD,
Solicitors of Defendant.

Affidavit and certificate of counsel waived.

N. D. STRONG,
Sol. pro Compl.

Pl'ff joins in demurrer.

N. D. & G. P. STRONG,
Sol. pro Compl.

And afterwards, at the October term of said circuit court for the Missouri districts, on the 22d day of October, A. D. 1858, the following proceedings took place in this cause, to wit:

HIRAM PEARSONS, Complainant,
agst.
JOHN BIRD, Defendant,
} In Chancery.

Decree.

And now, on this day, this cause being regularly called on the docket, and it appearing to the court that the demurrer filed by defendant to the bill of complainant was sustained at the last term of this court, and that the complainant had failed to file an amended bill according to the leave then granted him, it is now finally ordered, adjudged and decreed, that the bill of said complainant be and the same is hereby dismissed; and it is further ordered, adjudged and decreed, that the complainant pay to the defendant the costs of this suit, and that he have execution therefor.

And afterwards, at the same term of said circuit court, on the 23d day of October, 1858, the following proceedings took place in this cause, to wit:

HIRAM PEARSONS, Complainant,
agst.
JOHN BIRD, Defendant.
} In Chancery.

Order granting Appeal.

This day comes the complainant by his solicitor, and on his motion an appeal is allowed said complainant to the Supreme Court of the United States from the decree rendered herein, and fifteen days are allowed to complainant to execute an appeal bond, to be approved by one of the judges of this court, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States for the eighth circuit and Missouri district.

HIRAM PEARSONS
agst.
JOHN BIRD.
} On Appeal.

Know all men by these presents, that we, Hiram Pearsons as principal, and Newton D. Strong as surety, are held and firmly bound unto John Bird in the sum of five hundred dollars, and for the payment of which well and truly to be made, we bind ourselves jointly and severally, and our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this second day of November, 1858.

Whereas the above named Hiram Pearsons on the twenty-third day of October, 1858, prayed an appeal in the above entitled cause to the Supreme Court of the United States to reverse the decree rendered on the twenty-second day of October, 1858, in said cause,

by the circuit court of the United States for the Missouri districts, said decree dismissing complainant's bill with costs:

Now, therefore, the condition of this obligation is such, that if the above named Hiram Pearsons shall well and truly prosecute the appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

HIRAM PEARSONS, [SEAL.]
By N. D. STRONG,
His Att'y in fact.

N. D. STRONG, [SEAL.]

Approved this second day of November, A. D. 1858.
SAMUEL TREAT,
U. S. District Judge of
East. District of Missouri.

MISSOURI DISTRICTS, *ss.*

I, Benjamin F. Hickman, clerk of the circuit court of the United States for the districts of Missouri, do hereby certify the foregoing 19 pages including, this, to contain a true and complete transcript of the record and proceedings had in the case of Hiram Pearsons against John Bird, as the same remains of record and on file in my office.

In witness whereof, I hereunto subscribe my name and affix the [L. S.] seal of our said court, this twenty-third day of November, A. D. 1858.

BEN. F. HICKMAN, *Clerk.*

Filed 10th Dec'r, 1858.

564.

SUPREME COURT OF THE UNITED STATES.

No. 156.

SALMON F. HEATH AND WILLIAM T. VAN PELT, PLAINTIFFS IN ERROR,

vs.

HENRY M. AMES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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Gideon, Print.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Be it remembered, that heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, came the said Henry M. Ames, by his attorney, Mr. Joy, and filed his præcipe for a summons against the defendants, Salmon F. Heath and William T. Van Pelt, as follows:

Præcipe for Summons.

STATE OF WISCONSIN.
District Court of the United States for the district of Wisconsin.

HENRY M. AMES
vs.
SALMON F. HEATH and WILLIAM T. VAN PELT.

To the clerk of said court:

SIR: Have the goodness to issue a summons in favor of the above named plaintiff against the above named defendants, in an action of assumpsit, claiming damages in the sum of thirty-five hundred dollars.

N. H. JOY,
Att'y for Henry M. Ames.

Whereupon a summons issued as follows:

UNITED STATES OF AMERICA.
District of Wisconsin, ss.

[L. S.]
The President of the United States of America, to the Marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon Salmon F. Heath and William T. Van Pelt, to appear before the district court of the United States of America, for the district of Wisconsin aforesaid, at Milwaukee, on the first Monday of October next ensuing, then and there to answer unto Henry M. Ames, in a plea of trespass on the case on promises, to his damage three thousand five hundred dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Andrew G. Miller, judge of the said district court of the United States, at the city of Milwaukee, in the said district of Wisconsin, this twenty-first day of September, in the

year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

J. M. MILLER, *Clerk.*

N. H. JOY, *Attorney.*

Return to Summons.

And afterwards, on or before the return day of said writ, came the said marshal, and returned said writ with his return endorsed thereon, as follows:

Served on the within named Salmon F. Heath and William T. Van Pelt, by reading this summons to each of them, and delivering a copy to each of them, this 22d day of September, 1857.

M. J. THOMAS, *Marshal,*
By J. A. CARSWELL, *Deputy.*

Fees, $5 90.

Bond for Costs.

And afterwards, to wit, on the twenty-third day of September, A. D. 1857, came the said plaintiff by his said attorney, and filed his bond for the security of costs, as follows:

Know all men by these presents, that we, Henry M. Ames, of the city and county of Oswego, State of New York, as principal, and J. S. Harvey, as surety, are held and firmly bound unto Salmon F. Heath and William T. Van Pelt, both of the city of Racine, State of Wisconsin, in the sum of two hundred and fifty dollars, to be paid to the said Salmon F. Heath and William T. Van Pelt, their executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Signed and sealed this day of , A. D. 1857.

The condition of this obligation is such, for that whereas the said Henry M. Ames has commenced an action at law in the district court of the United States, for the district of Wisconsin, against the said Salmon F. Heath and William T. Van Pelt: Now, therefore, if the said Ames shall pay on demand all costs that may be awarded to the said defendants in said suit, then this obligation to be void; otherwise to be and remain in full force and virtue.

HENRY M. AMES, [SEAL.]
By his attorney, N. H. JOY.
J. S. HARVEY. [SEAL.]

Sealed and delivered in the presence of—

STATE OF WISCONSIN,
Milwaukee County, ss.

J. S. Harvey, being duly sworn, deposes and says, that he is worth two hundred and fifty dollars over and above all debts owing by him.

Subscribed and sworn to before me, this 23d day of September, A. D. 1857.

C. H. CARPENTER,
Notary Public, Mil. Co., Wis.

Declaration.

And afterwards, to wit, on the second day of October, A. D. 1857, came the said plaintiff, by his said attorney, and filed his declaration, as follows:

State of Wisconsin, District Court of the United States for the district of Wisconsin.

To wit, this 5th day of October, A. D. 1857, district of Wisconsin.

HENRY M. AMES
vs.
SALMON F. HEATH and WILLIAM T. VAN PELT.

Henry M. Ames, a citizen and resident of Oswego, in the State of New York, complains of Salmon F. Heath and William T. Van Pelt, citizens and residents of the city of Racine, in the State of Wisconsin, to wit: the said Salmon F. Heath and William T. Van Pelt were summoned to answer the said Henry M. Ames, in a plea of trespass on the case, on promises.

And thereupon the said Henry M. Ames, by his attorney, N. H. Joy, complains for that, to wit, on the 4th day of May, A. D. 1857, to wit, at Racine, in said district, the plaintiff, as party of the first part, at the special instance and request of the said defendants, made and entered into a written contract with the said defendants as parties of the second part, for the sale of a vessel called the schooner Orion, of great value, to wit, of the value of thirty-five hundred dollars, with all to her belonging or appertaining, which said contract is in the words and figures following, to wit:

"This agreement, made at Racine, this 4th day of May, 1857, between H. M. Ames, of Oswego, by S. T. Hooker, as his agent, of the first part, and Wm. T. Van *Velt* and S. F. Heath, of Racine, of the 2d part, witnesseth, that the said Ames agrees to sell, and hereby sells, to the said Van Pelt and Heath the whole of the schooner Orion, now at Tonawanda, in the district of Buffalo, as she now lies, with all to her belonging, one anchor, chains, and whatever belongs to her, for the sum of twenty-one hundred dollars, in manner as follows: to give their notes, $350 at 2 months, $350 at 4 months, $350 at 6 months, $350 at 14 months, $350 at 16 months, and $350 at 18 months, with interest from this date, and give a mortgage on the said schooner, and keep her insured for the benefit of the said Ames to the am't due and unpaid on the

purchase money. The bill of sale and mortgage to be made out after the usual form.

For H. M. AMES,
S. T. HOOKER.
W. T. VAN PELT,
S. F. HEATH."

And the plaintiff avers that said contract was duly made and executed by him and the said defendants, and by the said defendants delivered to him on said fourth day of May, and that he, the said plaintiff, then and there, and in and by said written contract, agreed to and with the said defendants to sell, and thereby did sell to the said defendants, the whole of the said schooner Orion, then at Tonawanda, in the district of Buffalo, as she then and there lay, with all to her belonging, one anchor, chains, and whatever belongs to her, the said schooner, for the sum of twenty-one hundred dollars, and to give a good title, free and clear from all incumbrances, to the said defendants of said schooner, and the other articles above-named to her belonging, to be paid for by the said defendants in the following manner, to wit: the said defendants to make and execute their six promissory notes payable to the said plaintiff, each in the sum of three hundred and fifty dollars, with interest from the date of said contract—one of said notes to be made payable in two months, one of them in four months, one of them in six months, one of them in fourteen months, one of them in sixteen months, and one of them in eighteen months; said notes and the moneys therein named to be secured by a mortgage on the said schooner, and the said defendants to keep said schooner insured for the benefit of the said plaintiff to the amount due and unpaid on the purchase money thereof.

And the plaintiff avers that the said defendants, in consideration of the agreement on the part of the said plaintiff in said contract contained, and of the sale of the said schooner, as set forth in said contract, did in and by said contract undertake, promise, and agree to and with the said plaintiff to purchase of the said plaintiff the said schooner Orion, and pay the said plaintiff therefor the sum of twenty-one hundred dollars, and to execute their six promissory notes therefor, each in the sum of three hundred and fifty dollars, with interest from the date of said contract, payable at the particular times above set forth, and to secure the payment of said notes and the moneys therein named by a mortgage on the said schooner, and to keep said schooner insured for the benefit of the said plaintiff to the amount due and unpaid on the purchase money thereof.

And the plaintiff avers that after the making and delivering of said contract to him as aforesaid, he, to wit, on the 5th day of May, A. D. 1857, made and executed in due form of law a bill of sale

to the said defendants, conveying said schooner, and all things to her belonging, to the said defendants, thereby giving to them a good title of said schooner, and all things to her belonging, free and clear from all incumbrances; and afterwards, to wit, at said Racine, to wit, on the 1st day of June, A. D. 1857, the said plaintiff tendered to the said defendants said bill of sale of said schooner so as aforesaid conveying the title of said schooner, and all things to her belonging and appertaining, to the said defendants, free and clear of all incumbrances; and the plaintiff avers that he also in like manner, as aforesaid, tendered the same bill of sale of said schooner to the said defendants, to wit, on the 10th day of September, A. D. 1857.

And the plaintiff says that he, to wit, on the said 1st day of June, and also, to wit, on the said 10th day of September, upon tendering to the said defendants said bill of sale, requested the said defendants on each of said occasions to make and execute and deliver to him the six promissory notes aforesaid, to secure the payment of said twenty-one hundred dollars and interest, and also to make and execute and deliver to the said plaintiff a mortgage upon said schooner to secure the payment of said promissory notes, and also to insure said schooner for the benefit of the said plaintiff to the amount due and unpaid on the purchase money of said schooner.

And the plaintiff says that, in pursuance of said contract, to wit, on the 18th day of May, A. D. 1857, he, to wit, at said Tonawanda, delivered to the said defendants the said schooner as she then and there lay, with all to her belonging, one anchor, chains, and whatsoever belonged to her the said schooner, and that they, the said defendants, then and there, to wit, on said 18th day of May, took into their possession said schooner as she then and there lay, with all to her belonging, one anchor, chains, and whatever belonged to her the said schooner, and from thence hitherto they the said defendants have continued to possess, hold, occupy, and use said schooner as their own proper goods and chattels, and all things to her belonging, and still do continue to possess, hold, occupy, use, and enjoy said schooner as their own property, and all things to her appertaining or belonging.

Nevertheless, the said defendants, not regarding their said several promises and undertakings so as aforesaid made to and with the said plaintiff, but contriving and intending to injure and defraud the said plaintiff in this behalf, did not then and there, to wit, on the said first day of June, nor on the said tenth day of September, nor at any other time or place, execute and deliver said six promissory notes to the said plaintiff, nor any of them; nor did they at any time or place make and execute a mortgage upon said schooner to secure the payment of said notes and the moneys therein named, or any part thereof; nor did they, the said defendants, at any time

insure said schooner, for the benefit of the said plaintiff, to the amount due and unpaid on the purchase-money thereof, nor have the said defendants in any manner, or at any time, paid the said plaintiff the said sum of twenty-one hundred dollars, or any part thereof, although often requested so to do; but hitherto have wholly neglected and refused so to do, and still do neglect and refuse so to do.

Wherefore the said plaintiff saith that he is injured and hath sustained damages to the amount of thirty-five hundred dollars.

And whereas, also, the said defendants, to wit, at said Racine, to wit, on the 10th day of September, A. D. 1857, were indebted to the said plaintiff in the further sum of thirty-five hundred dollars for the value of another vessel called the schooner Orion, before then by the said plaintiff sold and delivered to the said defendants, and at their special instance and request; and being so indebted, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at said Racine, undertook, and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants have not paid said last named sum of money, or any part thereof, although the said defendants afterwards, to wit, on the said tenth day of September, A. D. 1857, were requested by the said plaintiff so to do, which is to the damage of the said plaintiff in the sum of thirty-five hundred dollars; and therefore he brings his suit, &c.

N. H. JOY,
Att'y for Plaintiff.

Rule to Plead.

And afterwards, to wit, on the fifth day of October, A. D. 1857, came the said plaintiff, by his said attorney, and entered in the order and rule book a rule on the defendant to plead, as follows:

HENRY M. AMES
vs.
SALMON F. HEATH AND WILLIAM T. VAN PELT.

1st Monday of October, A. D. 1857.

On motion of N. H. Joy, pl'ffs' att'y, ordered that the defendants hereto plead to the plaintiffs' declaration on file by the first Monday of November next, or their default will be entered.

N. H. JOY,
Pl'ffs' Att'y.

Plea and Notice.

And afterwards, to wit, on the twenty-fourth day of November,

A. D. 1857, came the said defendants, by their attorneys, Messrs. Cary, Farr & Evans, and filed their plea and notice, as follows:

United States District Court for the district of Wisconsin.

SALMON F. HEATH AND WILLIAM T. VAN PELT ads. HENRY M. AMES.

And the said defendants, Salmon F. Health and William T. Van Pelt, by Cary, Farr & Evans, their attorneys, come and defend the wrong and injury, when, &c., and say that they did not undertake and promise in the manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, and the plaintiff doth the like, &c.

CARY, FARR & EVANS,
Defendants' Attorneys.

To the above named Plaintiff:

Take notice, that on the trial of the above entitled cause, the defendants will give in evidence, under the general issue above pleaded, that at the time when said bill of sale of said schooner Orion was tendered to them by said plaintiff at Racine, on the day of , A. D. 1857, and before the commencement of this suit, the said defendants then and there offered to execute and deliver to said plaintiff their four promissory notes for the sum of $350 each, due in six, fourteen, sixteen, and eighteen months, respectively, from the fourth day of May, 1857, with interest from said fourth day of May, and to secure the same by a mortgage on said schooner Orion, and to insure said schooner for the benefit of said plaintiff to the amount of said promissory notes, and at the same time and place offered to pay said plaintiff the sum of seven hundred dollars, with interest from the said fourth day of May, by allowing the same to the amount thereof, in satisfaction to that extent of the claims of the said defendants, against the said plaintiff, for the damage which the said plaintiff had sustained by reason of the said schooner Orion not answering the representations made in regard to her by said plaintiff to the said defendants at the time of entering into the agreement in the said declaration mentioned, but that the said plaintiff utterly and entirely refused to receive said notes and mortgage, and also refused to allow the claim of the said defendants. You will further take notice, that said defendants will prove, as aforesaid, that on the day of , A. D. 1857, and before the commencement of this suit, at Racine, the said defendants offered to execute and deliver to the said plaintiff their four promissory notes for the sum of $350 each, due in six, fourteen, sixteen, and eighteen months, from the 4th day of May, A. D. 1857, respectively, with interest from the said

fourth day of May, and to secure the same by a mortgage on said schooner Orion in the usual form, and to insure said schooner Orion for the benefit of the plaintiff for the amount of said notes. But the said plaintiff utterly and entirely refused to receive the same, and ever since has refused, and still does refuse; and the said defendants have at all times been ready and willing, and now are ready and willing, to execute and deliver said notes and mortgage, and to insure said vessel for the benefit of said plaintiff, and hereby offer to execute the same and to assign a policy of insurance on said schooner to the full amount of said notes to the said plaintiff. You will further take notice, that on the trial of the above entitled cause, the defendants will also give in evidence, under the general issue above pleaded, that at the time of the making of said agreement mentioned and set forth in the said plaintiff's declaration, and immediately prior thereto, the said plaintiff, in order to induce said defendants to make said contract and purchase said vessel, represented to said defendants that said schooner Orion was then lying afloat in the harbor of Tonawanda, a port on the Niagara river, in the State of New York, and that the said defendants, then and there relying upon said representation, and having no knowledge of the actual condition of said schooner except from said representation, made and executed said agreement, and purchased said schooner Orion for the price mentioned in said agreement, when in truth and in fact said schooner Orion was not then afloat in said harbor, at the port of Tonawanda, but, on the contrary thereof, was then and there aground, high and dry, on the bank of said Niagara river, at or near said Tonawanda, and in consequence thereof said schooner was of little value, and the said defendants were put to great cost and expense in getting said schooner afloat, and in repairing the damage occasioned thereby, and were deprived of the use of said schooner for a long space of time, to wit, for thirty days, and thereby lost great gains and profits which they otherwise might and would have made. All which damages the said defendants will recoupe on the trial of this cause against the claim of the said plaintiff against them.

And the said defendants will further prove, under the general issue above pleaded, that by the terms of the agreement above set forth, the said schooner was represented and warranted to be afloat in the harbor at the port of Tonawanda, in the State of New York, and that the real condition and situation of said schooner at the time of making said agreement was wholly unknown to the said defendants, and that they relied wholly upon the representations of said plaintiff in relation thereto, but that in truth and in fact the said schooner, at the time of making said agreement, and for a long time previous thereto, was not afloat in said harbor, but, on the contrary, was then and there aground, lying high and dry on the bank of said Niagara river, at or near said Tonawanda, which

facts were wholly unknown to said defendants, and that in consequence of said vessel being so aground, and high and dry, on the bank of said river, the said defendants were put to great cost and expense in getting said schooner afloat, and in repairing the damages occasioned thereby, to wit, $800, and were deprived of the use of said schooner for a long space of time, to wit, for thirty days, and thereby lost great gains and profits, to wit, $700, which they otherwise might and would have made. All of which damages the said defendants will recoupe on the trial of this cause against the claims of the said plaintiff against them.

And the said defendants will also prove that the said plaintiff, in order to induce the said defendants to buy said schooner Orion, and to execute said contract, represented to said defendants that said schooner was then afloat in the harbor at Tonawanda, a port on Niagara river, in the State of New York, when in truth and in fact the said plaintiff well knew that said schooner was not then and there afloat in said harbor; but that, on the contrary, that she was then aground, high and dry upon land, at or near Tonawanda, on the bank of the river; and that the said defendants having no knowledge of the situation of said schooner, and relying upon the representations of said plaintiff, that said schooner was then afloat as aforesaid, purchased said schooner, and that in consequence of said schooner being so aground on said shore said defendants were put to great cost and expense, to wit, $800, in getting said vessel afloat and off from said shore, and repairing damages thereby occasioned, and that in consequence thereof they were for a long space of time deprived of the use of said schooner, to wit, for the space of thirty days, and thereby lost great gains and profits, to wit, $700, which they otherwise might and would have made. All of which damages the said defendants will recoupe on the trial of this cause out of the claims of the said plaintiff against them.

Dated Racine, November 18th, 1857.

Yours, &c.,

CARY, FARR & EVANS,
Defendants' Attorneys.

Trial.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

At a stated term of the district court of the United States of America, for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fourth day) of January, A. D. 1858; present, the Honorable Andrew G. Miller, judge of said court, presiding.

On the eighteenth day of the said term, to wit, on the second day of March, A. D. 1858, the following proceedings were had, to wit:

HENRY M. AMES
vs.
SALMON F. HEATH and WILLIAM T. VAN PELT. } At Law.

This day came the parties, by their counsel, and the defendants withdrew the notice annexed to their plea, and all things therein contained, and the issue herein came on to be heard; whereupon a jury was called to try the same, who came, to wit: John H. Eldredge, Frederick Wardner, Gabriel Shoyer, Anthony Green, Solan H. Lane, John Hart, J. F. Birchard, Priam B. Hill, Samuel Chandler, A. E. Dibble, Nehemiah Ward, and Morgan L. Skinner, twelve free, honest, and lawful men of the district, who being severally sworn, empanelled, and charged by the court, on their said oaths, respectively, do say: That the defendants did assume and promise in manner and form as the said plaintiff has herein declared against them, and assess the damages to the said plaintiff at the sum of two thousand two hundred and twenty-three dollars and thirty-one cents.

Judgment.

And afterwards, to wit, on the twentieth day of said term, to wit, on the fourth day of March, A. D. 1858, the following other proceedings were had, to wit:

This day came the plaintiff, by his counsel, and on his motion it is considered and adjudged by the court now here that the plaintiff do have and recover of the defendants, Salmon F. Heath and William T. Van Pelt, two thousand two hundred and twenty-three dollars and thirty-one cents so assessed by the jury, together with fifty-one dollars and ninety-five cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll signed March 4th, A. D. 1858.

J. M. MILLER,
Clerk.

Damages.....	$2,223 31
Costs.....	51 95
	$2,275 26

Judgment roll filed March 4th, A. D. 1858, at 5 o'clock, p. m.

J. M. MILLER,
Clerk.

Bill of Exceptions.

And afterwards, to wit, on the eighth day of March, A. D. 1858, came the said defendants, by their said attorneys, and filed their bill of exceptions, and same day citation and writ of error issued and copy of writ filed for defendant in error; which said bill of exceptions is as follows:

United States District Court for the district of Wisconsin.

SALMON F. HEATH and WILLIAM T. VAN PELT ads. HENRY M. AMES.

Afterwards, to wit, on the second day of March, A. D. 1858, the issue so as aforesaid joined between the parties came on to be tried by a jury of the county, who were duly chosen, tried and sworn, and the said plaintiff, to maintain the issue on his part, offered to read in evidence to the jury the contract or agreement set out in the declaration in this cause, to the reading of which the defendant did then and there object, for the reason that the execution of the same was not proved. Which objection was overruled by the court, and the defendants then and there excepted to said decision, and the agreement was then read in evidence as follows, to wit:

This agreement, made at Racine the 4th day of May, 1857, between H. M. Ames, of Oswego, by S. T. Hooker, as his agent, of the first part, and William T. Van Pelt and S. F. Heath, of Racine, of the second part, witnesseth: That the said Ames agrees to sell, and hereby sells, to the said Van Pelt and Heath the whole of the schooner Orion, now at Tonawand, in the district of Buffalo, as she now lies, with all to her belonging, one anchor, chains, and whatever belongs to her, for the sum of twenty-one hundred dollars, and to give a good title, free and clear from all encumbrances, and the said Van Pelt and Heath agree to purchase the said schooner Orion, and pay the said Ames the sum of twenty-one hundred dollars, in manner as follows: to give their notes for $350 at 2 months, $350 at 4 months, $350 at 6 months, $350 at 14 months, $350 at 16 months, and $350 at 18 months, with interest from this date, and give a mortgage on the said schooner, and keep her insured for the benefit of the said Ames to the am't due and unpaid on the purchase money. The bill of sale and mortgage to be made out after the usual form.

For H. M. AMES,
S. T. HOOKER.
W. T. VAN PELT,
S. F. HEATH.

The plaintiff then called James D. Bowland, who was duly sworn, and testified:

Last May I was acting as agent of Heath and Van Pelt in the purchase of the vessel in question; I was present when the contract was made and executed, in Van Pelt's warehouse, in Racine. I went to Tonawanda to take charge of the vessel at the request of the defendants; I took charge of the vessel on the 17th of May, and kept in charge of her until August last. On the 4th of May the vessel was at Tonawanda, in the State of New York. The agreement was made at Racine, in Van Pelt's warehouse. I got a letter from Mr. Hooker to Ford to take charge of the vessel; I presented it to Ford when I got to Buffalo. He said his power over the vessel expired on the sale. I received the letter from Ames afterwards; I found the vessel at Tonawanda aground, and telegraphed to defendants the situation of the vessel; I telegraphed to my employers she was high and dry, and I waited until the 17th, and then received a despatch from defendants to take charge of the vessel and fit her out; I received several letters from defendant. After some time, and having considerable trouble, I got the vessel off, and took her to Buffalo; I hauled her out and found her uninjured; I caulked her, and then took in a load of coal, and came to Racine.

All of the foregoing testimony was taken under objection made, which was overruled, and the defendant excepted, and by consent of the court the objection and exception was here entered.

Question by plaintiff's counsel. What was that vessel worth when you took charge of her?

Objected to by defendants; objection overruled, and defendant excepted.

Answer. The vessel was worth the price named in the contract. I continued to sail the vessel for defendants till August 29th, and then delivered her to defendant, Heath. (Witness stated that he had defendant's letters and telegraph, and would produce them if desired.)

L. B. S. Miller was then sworn for plaintiff, and testified as follows:

In September last, I think the 10th or 11th, I called on defendant, Heath, and tendered him this bill of sale, (bill of sale was here produced by Miller,) and demanded the notes and mortgage on the vessel according to the contract which I had with me. He refused to do it, and I then demanded the vessel, and he refused to deliver that to me; I then called on Mr. Van Pelt, and made the same tender and demand, and he said he had nothing to do with it. The tender to Heath was in his store, and to Van Pelt was in his warehouse; I was acting as the plaintiff's agent.

On his cross-examination he testified that on the next Monday afterwards John W. Cary came to Joy's office with Heath and Van Pelt, and talked the matter over. Defendants had a copy of the contract above set out, but the words "to give their notes for"

were left out of said copy of contract. After said Cary had examined contract above set out, he then stated that the defendants were ready to execute the notes, except the two first, according to contract, provided the amount of the two first was relinquished as damage which the defendants had sustained. The two first payments were then due. I am a partner of Mr. Joy. The plaintiff's counsel then offered to read in evidence the bill of sale testified to by the witness, Miller, which was objected to by the defendants. Objection overruled, and defendant excepted.

And said bill of sale was then read as follows, to wit:

To all to whom these presents shall come, greeting:

Know ye, that I, Henry M. Ames, of the city and county of Oswego, State of New York, sole owner of the schooner or vessel called the Orion, of Chicago, of the burthen of one hundred forty-eight tons, or thereabouts, for and in consideration of the sum of two thousand one hundred dollars, lawful money of the United States of America, to me in hand paid, before the sealing and delivery of these presents by William T. Van Pelt and S. F. Heath, of Racine, State of Wisconsin, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented and paid, have bargained and sold, and by these presents do bargain and sell unto the said William T. Van Pelt and S. F. Heath the one undivided half part of said vessel to each their executors, administrators and assigns, the undivided half part to each of the said schooner or vessel, together with the mast, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging. The certificate of the enrolment of which said schooner or vessel is as follows, to wit:

Enrolment—No. 100.

In conformity to an act of the Congress of the United States of America, entitled An act for enrolling and licensing ships and vessels, &c., passed 18th February, 1793, and an act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern territories of the United States, and for other purposes, passed the 2d of March, 1831, and the acts of the 7th July, 1838, and 29th July, 1850, John Milton Isaacs, of Chicago, Illinois, having taken or subscribed the oaths required by the said acts, and having sworn or affirmed that he is a citizen of the United States, sole owner of the schooner or vessel called the Orion, of Chicago, whereof Thomas Goe is at present master; and as he hath sworn or affirmed is a citizen of the United States, and that the said schooner or vessel was built at Henderson, in the year 1854, as appears by her certificate of enrolment, dated at the port of Sackett's Harbor June 20th, 1854, numbered (8) eight, now surrendered by having changed owners and districts; and said

certificate of enrolment having certified that the said schooner or vessel has one deck and two masts, and that her length is eighty-six feet —— inches, her breadth twenty-three feet —— inches, her depth eight feet six inches, and that she measures one hundred forty-eight tons 50 ninety-fifths; that she is a schooner, has stern, no galley, and no figure-head:

And the said John Milton Isaacs having agreed to the description and admeasurement above specified, and sufficient security having been given in conformity with the terms of said acts, the said schooner has been duly enrolled at the port of Chicago.

Given under my hand and seal of office, at the port of Chicago, [L. S.] this eighth day of September, in the year one thousand eight hundred and fifty-six.

T. J. RUSSELL,
Dept. Coll.

To have and to hold the said undivided half part of said vessel and appurtenances thereunto belonging, unto each the said William T. Van Pelt and S. F. Heath, their executors, administrators, assigns, to the sole and only proper use, benefit, and behalf of each the said William T. Van Pelt and S. F. Heath, their executors, administrators, and assigns forever.

In witness whereof, I have hereunto set my hand and seal, this fifth day of May, in the year of our Lord one thousand eight hundred and fifty-seven.

H. M. AMES. [SEAL.]

In presence of—
J. H. GOLDEY,
GEO. BUHIL.

The plaintiff here rested his case, and the defendants' counsel insisted that the plaintiff was not entitled to recover, inasmuch as the bill of sale read in evidence was not such a bill of sale as the contract called for, and that it was only a bill of sale of one undivided half part of said schooner or vessel; but the said district court did then and there decide that the said bill of sale was sufficient and a compliance in that particular with said contract; to all of which ruling decision the defendants' counsel did then and there except.

And no further testimony being offered, the said court charged the jury that the plaintiff claimed $2,100, with interest from the 4th day of May, A. D. 1857; to which charge and every part thereof the counsel for the defendant did then and there except.

And because none of said exceptions, rulings, and decisions of the said court appear in the record and proceedings of this cause, the judge of the said district court has, at the request of the said defendants to this bill of exceptions, set his hand and seal this 9th day of March, A. D. 1858.

A. G. MILLER. [SEAL.]

Bond.

And afterwards, to wit, on the fifteenth day of March, A. D. 1858, came the said defendants and filed a bond, as follows:

Supreme Court of the United States.

SALMON F. HEATH and WILLIAM T. VAN PELT
vs.
HENRY M. AMES. } In Error.

Know all men by these presents, that we, Salmon F. Heath and William T. Van Pelt, as principals, and Lucius S. Blake and John Coleman, as sureties, all of the city of Racine, and State of Wisconsin, are held and firmly bound unto the above named Henry M. Ames in the sum of five thousand dollars to be paid to the said Henry M. Ames, his executors or administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated at Racine, in the State of Wisconsin, on this fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above named Salmon F. Heath and William T. Van Pelt have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the district court of the United States for the district of Wisconsin, now, therefore, the condition of this obligation is such, that if the above named William T. Van Pelt and Salmon F. Heath shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SALMON F. HEATH. [SEAL.]
W. T. VAN PELT, [SEAL.]
L. S. BLAKE, [SEAL.]
JOHN COLEMAN. [SEAL.]

Sealed and delivered in presence of—
PEYTON R. MORGUE.

Taken, subscribed, and acknowledged before me this 15th day of March, A. D. 1858.

W. E. WORDING,
U. S. Commissioner.

STATE OF WISCONSIN, *County of Racine, ss.*

Lucius S. Blake and John Coleman, of the city and county of Racine, and State aforesaid, being duly sworn, does each for himself severally say, that he is a resident and freeholder within this State, and is worth the sum of five thousand dollars, over and

above all debts and responsibilities he owes or has incurred, and all property exempt from execution by law.

L. S. BLAKE,
JOHN COLEMAN.

Severally sworn before me, this 15th day of March, 1858.

W. E. WORDING,
U. S. Commissioner.

Whereupon it is ordered by the court that execution be superseded.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this fourth day of [SEAL.] December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

J. M. MILLER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Judge of the District Court of the United States of America, for the district of Wisconsin, greeting:

[L. S.]

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court of the United States of America for the district of Wisconsin, before you, between Henry M. Ames, plaintiff, and Salmon F. Heath, William T. Van Pelt, defendants, a manifest error hath happened, to the great damage of the said Salmon F. Heath and William T. Van Pelt, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this eighth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

J. M. MILLER, *Clerk.*

Citation.

[SEAL.]

United States of America, to Henry M. Ames, greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Wisconsin, wherein Salmon F. Heath and William T. Van Pelt are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this eighth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the eighty-second.

A. G. MILLER,
Judge of the U. S., for the Wisconsin District.

Served on the within named Henry M. Ames, by showing this citation to N. H. Joy, his attorney, personally, and delivering to him a copy thereof, this 15th day of March, 1858.

M. J. THOMAS, *Marshal.*
By J. A. CARSWELL, *Deputy.*

Fees.—Service	$2	00
Travel	1	50
Copy		20
	$3	70

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

John A. Carswell, being duly sworn, says that the facts set forth in the above return are true, and further saith not.

Sworn to and subscribed before me, this 19th day of March, 1858.

W. E. WORDING,
U. S. Commissioner.

Filed March 20, 1858.

Filed 10th December, 1858.